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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/500,344	06/24/2004	Tatsuya Hanafusa	09852/0201547-US0	2608
7278 7590 04/15/2009 DARBY & DARBY P.C. P.O. BOX 770 Church Street Station New York, NY 10008-0770				
EXAMINER WEAVER, SUE A				
ART UNIT		PAPER NUMBER		
3781				
MAIL DATE		DELIVERY MODE		
04/15/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/500,344

Applicant(s)

HANAFUSA ET AL.

Examiner

Sue A. Weaver

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 4-9 and 13-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13 and 14 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 5 and 15 is/are rejected.
- 7) ☒ Claim(s) 6-9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date 10/10/08
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: There doesn't appear to be any description of "a curl section including an approximate plane parallel to the central axis of the bottle can member" as now claimed in claims 1 and 17.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1,2, 4, 5 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Daiwa JP '333 or Ogawa et al JP '627 in view of Dakara, JPI Journal Vol 28 no9, Matsuka et al JP '715 and Kano et al JP '417, all cited by applicants.

Both Daiwa and Ogawa et al teach a threaded metal container with the 28mm diameter, thickness and angle claimed in claims 1 and 4 (see paragraphs 45-50). The larger 38mm diameter is known in metal containers as taught by Dakara as reflected in the tables as it the thread pitch claimed in claim 2. The thread number is also considered to be suggested by Daiwa and Ogawa et al. In any event such is known as taught by Matsuka et al and Kano et al. With regard to the height the examiner adopts the reasoning set forth in the reports for application 2002-381111 that given the mouth diameter, thickness and angle taught by either Daiwa or Ogawa et al using formula F1. The resultant height would fall within that claimed by applicants. Therefore it would have been obvious to one of ordinary skill in the art given the parameter taught by the

references. Moreover to have formed the curl of a neck with a thread number as taught by Kano et al with a curl having a section approximate a plane parallel to a central axis of the bottle neck to provide an improved seal with a cap liner would also have been obvious. To the extent that applicants have shown a criticality for the height in claim 1, the resultant height still falls within that being claimed.

4. Applicant's arguments filed 12/29/08 have been fully considered but they are not persuasive. Kano et al JP. 417 already teaches the flattened curl with a plane section 5b to improve the seal with a cap liner. It is the outside diameter of the curl not the shape as indicated by applicants' failure to describe the shape, that is the factor and that is already suggested. Moreover the examiner is unable to find any antecedent for the particular height range claimed in claim 1 and argued by applicant, although it falls within the range suggested. It is also noted that applicants have not provided any evidence of criticality for the particular range claimed.

5. Applicant's arguments, see page pages 7 and 8 of the amendment, filed 12/29/08, with respect to the objection to the disclosure and rejection of claims 6-9 have been fully considered and are persuasive. The objection to the disclosure and rejection of the claims has been withdrawn.

6. Claims 6 -9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claim 13 and 14 are allowed while claims 3 and 10-12 have been canceled.

8. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with

Art Unit: 3781

all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

Certificate of Mailing

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Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sue A. Weaver whose telephone number is (571) 272-4548. The examiner can normally be reached on Tuesday-Friday (5:30-4).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on __. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sue A. Weaver/
Primary Examiner, Art Unit 3781